IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Rajendra Singh v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.4821/2004
under Article 226 of the Constitution of India.

Date of Order : 22nd July, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.S.Singhvi, for the petitioner.
Mr. B.L.Tiwari, Addl.Govt.Advocate.

BY THE COURT :

By this petition for writ an appropriate writ order or direction is sought by the petitioner for the respondents to offer appointment to him on the post of Physical Training Instructor Gr.II from the date persons less meritorious to him were offered appointments and employed.

The facts in brief are as follows:-

The petitioner obtained Bachelor's degree in Physical Education (for short “BPE”) in the year 1998 from Nagpur University as a regular student of Saket College of Physical Education, Gondia, District

Bhandara, Maharashtra. The course of BPE is an integrated three years' degree course in physical education. The petitioner was admitted in aforesaid course in the month of September, 1995.

The Dy.Director (Secondary) Education, Jodhpur Zone, Jodhpur under an advertisement dated 27.8.1998 invited applications from eligible desirous candidates for appointment to the post of Physical Training Instructor Gr.II. The petitioner considering himself eligible submitted an application in pursuant to the advertisement referred above. A select list was declared by the respondent Dy.Director (Secondary) Education, Jodhpur Zone, Jodhpur after scrutinising the applications received in pursuant to the advertisement dated 27.8.1998 but in the said list name of the petitioner was not there though the persons less meritorious to him were shown as the candidates selected for appointment to the post of Physical Training Instructor Gr.II.

The petitioner in these circumstances approached in the office of the Dy.Director (Secondary) Education, Jodhpur Zone, Jodhpur wherefrom he came to know that he was not considered as a person eligible to be recruited as Physical Training Instructor Gr.II on the count that the degree possessed by him i.e. of BPE was not considered and treated as a degree equivalent to the Bachelor's

degree in Education. On this count the applications submitted by other similarly situated persons were also rejected by the respondents in Jodhpur Zone of the Education Department as well as in other Zones of the Education Department in State of Rajasthan. One Shri Hariram being aggrieved by the same preferred a writ petition before this Court and the same came to be accepted by judgment dated 21.5.1999 by holding that the persons having the qualification of BPE are eligible to be appointed as Physical Training Instructor Gr.II under Rajasthan Educational Subordinate Service Rules, 1971 (hereinafter referred to as “the Act of 1971”). The validity of aforesaid judgment was challenged by State of Rajasthan by way of filing a special appeal before Division Bench but the same also stood rejected by judgment dated 13.9.2000. In spite of decision of this Court in the case of Hariram the candidature of the petitioner was not considered by the respondents for appointment to the pot of Physical Training Instructor Gr.II by treating the degree of BPE not equivalent to the Bachelor's degree in Education. The petitioner, therefore, approached this Court by way of filing a writ petition but the same was dismissed by this Court by an order dated 4.12.2001 being suffered by delay and latches. The appeal preferred by the petitioner against the order dated 4.12.2001 was also dismissed by Division Bench of this Court on 28.8.2002. However, the special leave petition preferred by the petitioner

before Hon'ble Supreme Court giving challenge to the order dated 28.8.2002 passed by the Division Bench of this Court came to be disposed of by Hon'ble Supreme Court on 13.3.2003 with an observation that the question of eligibility for the post of Physical Training Instructor Gr.II shall remain open. After disposal of special leave petition preferred by the petitioner he submitted a representation to the Dy.Director (Secondary) Education, Jodhpur Zone, Jodhpur on 1.5.2003 to consider his candidature for the purpose of appointment as Physical Training Instructor Gr.II. A copy of the representation was also forwarded to the Director, Primary and Secondary Education, Government of Rajasthan, Bikaner. The Director by a communication dated 30.6.2003 instructed the petitioner to remain present before him on 23.7.2003 for redressal of his grievance, the petitioner accordingly reported in the office of the respondent Director on 23.7.2003. A patience hearing was given to the petitioner and the grievance of the petitioner was also accepted in form of representation by the Director, Primary and Secondary Education. The petitioner being failed to get any positive response from the respondents again approached this Court by way of filing a writ petition seeking a direction for the respondents to dispose of the representation submitted by him to the Director, Primary and Secondary Education on 23.7.2003. The writ petition preferred by the petitioner (SBCWP No.5439/2003) was

disposed of by this Court on 19.9.2003 with a direction to the respondents to decide the representation submitted by the petitioner within a period of two months from the date of presentation of certified copy of the order dated 19.9.2003. The petitioner served the copy of the order dated 19.9.2003 upon the respondents on 10.10.2003, however, no action was taken within the period prescribed, therefore, the petitioner lodged a contempt petition against the respondents before this Court. During pendency of contempt petition the respondents decided the representation submitted by the petitioner by an order dated 9.2.2004. The order dated 9.2.2004 is the order impugned in present writ petition whereby the respondents treated the petitioner ineligible to be considered for appointment as Physical Training Instructor Gr.II on the count that the college wherefrom the petitioner obtained degree of BPE in the year 1998 was not having recognition from the National Council of Teachers Education as required under the National Council of Teachers Education Act, 1993 (hereinafter referred to as “the Act of 1993”).

The petitioner after receiving the communication dated 9.2.2004 served a notice for demand of justice upon the Dy.Director (Secondary), Department of Education, Jodhpur Zone, Jodhpur claiming appointment on the post of Physical Training Instructor Gr.II with assertion that he was admitted

in BPE course in the year 1985 and at that time there was no need of getting any recognition from the National Council of Teachers Education under the Act of 1993. The petitioner in the notice for demand of justice in quite unambiguous terms made a legal position with regard to recognition by NCTE clear by stating that the Act of 1993 came into force on 17.8.1995 and the regulations thereunder were framed by the NCTE on 24.2.1996. Prior to 24.2.1996 application, therefore, could not be made by any college for grant of affiliation with NCTE. The petitioner emphasised that prior to 24.2.1996 there was no occasion for any institution to submit application for affiliation/recognition from the council as required under Section 17 of the Act of 1993. No response was given by the respondents to the petitioner, however, under a communication dated 15.3.2004 the respondents sought certain clarifications with regard to controversy in question from Regional Director, NCTE, Western Regional Committee, Bhopal. The petitioner repeated his cause before the respondents by submitting subsequent representations and notice for demand of justice but of no consequence. The petitioner ultimately by way of filing the instant petition claimed the relief as stated in initial paras of this judgment.

A reply to the writ petition has been filed by the respondents stating therein that the

candidature of the petitioner was rightly not considered for appointment to the post of Physical Training Instructor Gr.II as at the time of consideration of applications the Department of Education was not considering the degree of BPE as a degree requisite and making the holders of such degree eligible to be recruited as Physical Training Instructor Gr.II. It is also stated in the reply that the petitioner obtained degree of BPE from Saket College affiliated with Nagpur University, Maharashtra without having any affiliation of that college with NCTE as required under the Act of 1993.

A rejoinder to the same has been filed by the petitioner mainly reiterating the contents of the writ petition with emphasis that both the counts on which the candidature of the petitioner was not considered by the respondents for appointment to the post of Physical Training Instructor Gr.II were subject matter of the litigation before this Court and the stand taken by the Education Department in those cases was held illegal by the Court.

Heard counsel for the parties.

The facts of present case demonstrates the confusion and indecisivenesses prevailing in the Education Department of Government of Rajasthan. Because of it only good seven years of the petitioner

in his youth have been wested and spoiled by the respondents by dragging him in totally unwarranted litigation. The questions involved in this petition in fact stood decided long back by this Court. The respondents in view of the directions given in those cases should have considered the candidature of the petitioner for the purpose of appointment to the post of Physical Training Instructor Gr.II. The respondents instead of doing so are contesting the case as if this is a controversy between two adversary parties for protection of their rights. The controversy with regard to qualification of BPE stood settled by this Court in the year 1999 itself and the respondents also accepted the same in the year 2003 after considering the representation submitted by him. The respondents subsequently rejected the petitioner's candidature on the count that the college wherefrom the petitioner acquired studies for BPE was not affiliated/recognised by NCTE as required under the Act of 1993. This question also stood decided by Division Bench of this Court in the case of Ramnarayan v. State, DBCWP No.2884/99, decided on 2.4.2003. The Division Bench of this Court in the aforesaid case in unequivocal terms held that NCTE framed regulations under the Act of 1993 on 24.2.1996, therefore, there was no need for the institutions which granted admission in the course concerned prior to 24.2.1996 to seek recognition for the batches which were already studying in those institutions. The relevant portion of the judgment of

Division Bench in the case of Ramnarayan v. State (supra) reads as under:-

> "Sub-section(1) itself does not make it compulsory to make an application for recognition even for continuing no ongoing course is progress. It implies that those who are desirous to continue with such course must apply for recognition within six months fro the appointed date. If such application is made, the institution is entitled to continue such courses on its own until the application is decided. In case of refusal of such application too the course is not to be closed abruptly but current courses are to continue thereafter until close of session. The closure comes into effect only from succeeding academic session.
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> Therefore, in our opinion Section 14 neither affects the courses already completed prior to the commencement of the Act nor does it affect the ongoing courses of the then current academic session until close of the session, whether an application in that regard for recognition of that course has been made or not. In case an application for such recognition is made, the courses already offered by the institution, its continues to be offered validly until such application is refused. If no application is made, it shall come to an end at the close of academic session which was ongoing on the appointed date. In case an application is made and rejected, the courses already offered shall be discontinued only after the

> academic session, in which such communication is made, comes to a close, that being clear import of Section 14, the degrees offered by a recognised institution or university established by law, which did not require any recognition at least at the relevant time in respect of courses offered by it, remain unaffected."

In view of Division Bench judgment of this Court the non-consideration of petitioner's candidature for the purpose of appointment to the post of Physical Training Instructor Gr.II is absolutely illegal, as the petitioner was admitted in course of BPE at Saket College of Physical Education, Gondia, District Bhandara in Maharashtra in the month of September, 1995 i.e. prior to 24.2.1996. In view of it the qualification possessed by the petitioner is sufficient and competent to treat him eligible for appointment as Physical Training Instructor Gr.II under the Rules of 1971. The decision of the respondents not to consider the candidature of the petitioner for the post concerned, therefore, is not sustainable in eye of law.

Accordingly, the writ petition is allowed. The respondents are directed to consider the candidature of the petitioner for the post of Physical Training Instructor Gr.II in pursuant to the selection proceedings taken place under the advertisement dated 27.8.1998 (Anx.2) . In event the petitioner is found suitable and if any person having marks less than the

petitioner is given appointment then the appointment shall also be given to the petitioner. The respondents are directed to complete the process of consideration of the petitioner within a period of two months from the date the petitioner submits a certified copy of this order to the respondent Dy.Director (Secondary), Department of Education, Jodhpur.

The cost of the petition is quantified as Rs.5,000/-.

(GOVIND MATHUR),J.

kkm/ps.